INTERIOR APPROPRIATIONS/Campaign Finance

SUBJECT: **Department of the Interior and Related Agencies Appropriations Bill for fiscal year 1999 . . . S. 2237. Lott motion to close debate on the McCain/Feingold amendment No. 3554.**

ACTION: CLOTURE MOTION REJECTED, 52-48

SYNOPSIS: As reported, S. 2237, the Department of the Interior and Related Agencies Appropriations Bill for fiscal year 1999, will provide $13.658 billion in new budget authority, which is $660 million less than requested. None of the funds in the bill will be used to implement actions called for solely under the Kyoto protocol (regarding so-called “greenhouse gases”) prior to its ratification. More than $8.23 billion will be generated from oil and gas leasing and other mineral leasing activities, from timber and range programs, and from oil production from the naval petroleum reserves.

The McCain/Feingold amendment would make all political party contributions subject to strict "hard-money" limits, and would define a new category of regulated speech called "electioneering communications." Details are provided below.

● Background on independent expenditures and issue advocacy. An independent expenditure is an expenditure that expressly advocates the election or defeat of a candidate and that is made independently of any candidate's campaign (if it is made in consultation with a candidate's campaign it is generally considered a coordinated expenditure and thus a contribution to that candidate, though it is an open question as to whether that formulation is constitutional; it has not been decided to what degree, if any, the right to engage in express advocacy can be conditioned on one's giving up one's right to exercise other constitutional freedoms, such as the right to petition the government or associational rights). In *Buckley* v. *Valeo* (424 U.S. 1, 44-45 (1976) (per curiam)), the Court ruled that restrictions on both contributions and expenditures in elections are restrictions on core First Amendment free-speech and associational rights. Such core liberties can only be limited if they pass the Court's "strict scrutiny" test: the Government must have a compelling reason for infringing, and it must use the least restrictive means possible to achieve its ends. The Court found that the need to avoid corruption or the appearance of corruption (a "quid pro quo") in the election of particular candidates justifies restricting contributions, but it does not justify restricting expenditures. It further found that

(See other side)

YEAS (52)

Republicans (7 or 13%)	Democrats (45 or 100%)	
Chafee	Akaka	Johnson
Collins	Baucus	Kennedy
Jeffords	Biden	Kerrey
McCain	Bingaman	Kerry
Snowe	Boxer	Kohl
Specter	Breaux	Landrieu
Thompson	Bryan	Lautenberg
	Bumpers	Leahy
	Byrd	Levin
	Cleland	Lieberman
	Conrad	Mikulski
	Daschle	Moseley-Braun
	Dodd	Moynihan
	Dorgan	Murray
	Durbin	Reed
	Feingold	Reid
	Feinstein	Robb
	Ford	Rockefeller
	Glenn	Sarbanes
	Graham	Torricelli
	Harkin	Wellstone
	Hollings	Wyden
	Inouye	

NAYS (48)

Republicans (48 or 87%)		Democrats (0 or 0%)
Abraham	Hatch	
Allard	Helms	
Ashcroft	Hutchinson	
Bennett	Hutchison	
Bond	Inhofe	
Brownback	Kempthorne	
Burns	Kyl	
Campbell	Lott	
Coats	Lugar	
Cochran	Mack	
Coverdell	McConnell	
Craig	Murkowski	
D’Amato	Nickles	
DeWine	Roberts	
Domenici	Roth	
Enzi	Santorum	
Faircloth	Sessions	
Frist	Shelby	
Gorton	Smith, Bob	
Gramm	Smith, Gordon	
Grams	Stevens	
Grassley	Thomas	
Gregg	Thurmond	
Hagel	Warner	

NOT VOTING (0)

Republicans (0)	Democrats (0)

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

contributions for independent expenditures can only be restricted if they are for "communications that in express terms advocate the election or defeat of a clearly identified candidate." The Court found no justification for restricting contributions for "issue" advocacy. Therefore, it drew a "bright line" test that makes a clear demarcation between issue advocacy, such as criticizing a legislator for voting against a particular bill, and express advocacy. Any vagueness in the test would be unconstitutional. It found that express advocacy has to "include explicit words of advocacy of election or defeat of a candidate" before it can be regulated.

- New restrictions on political parties. All contributions to national political parties would be regulated as "hard-money" contributions. (The term "hard-money" refers to a contribution the size of which is limited by law, and which is subject to extensive reporting requirements; the term "soft-money" refers to a contribution the size of which is not limited by law. Currently, contributions to political parties that are to be used for expressly advocating the election or defeat of particular candidates are subject to hard-money restrictions, and contributions for generic party activities are regulated as soft-money contributions.) Also, State, district, and local party expenses would be regulated as Federal party expenses unless they were solely for State/local elections. A political party would not be permitted to make both independent expenditures and coordinated expenditures in an election once its nominee had been selected. Coordinated expenditures by political parties with candidates' campaigns would be defined as anything of value "provided in coordination" for the purpose of influencing a Federal election, "regardless of whether the value being provided is a communication that is express advocacy". "In coordination" would be defined to cover a wide range of communications and activities, including the offering of advice or information.

- Electioneering communications. The amendment would define a new category of regulated speech called "electioneering communications." A four-part test would be used to determine if a communication fell into this new category: it would have to refer to a clearly identified candidate for Federal office; it would have to be made within 30 days of a primary or 60 days of a general, special, or runoff election; it would have to be broadcast from a television or radio broadcast station; and it would have to be broadcast from a station whose audience included the electorate involved. Newscasts and editorials would be exempt (unless they were made from broadcast stations that were owned or controlled by political parties, committees, or candidates). Communications that were regulated as campaign expenditures or as independent expenditures would not also be regulated as electioneering communications. The amendment would define an independent expenditure as an expenditure: that expressly advocated the election or defeat of a clearly identified candidate; and that was not provided in coordination with a candidate. Electioneering communications made in coordination with a candidate would be regulated as contributions rather than as electioneering communications. Labor unions and corporations would be barred from using their general funds to pay for electioneering communications. They could use funds from their political action committees (PACs), the contributions to which are voluntary. 501(c)(4) corporations (nonprofit corporations that are not tax-exempt) could make electioneering communications only if they did not receive any funds from entities prohibited from making such communications. If a 501(c)(4) corporation received any such funds, it would have to create a segregated account similar to a PAC if it wished to make an electioneering communication. As soon as any entity spent $10,000 in an election cycle on electioneering communications, and for each $10,000 it spent thereafter, it would be required to report to the Federal Election Commission the names and addresses of donors for those communications if they gave $500 or more over a 2-year period. Donor limits would not be placed on electioneering communications.

- Miscellaneous. New reporting requirements would be placed on independent expenditures. All candidate and other reports would be filed electronically and the Federal Election Commission (FEC) would post them within 24 hours of receipt on the Internet. Contributions over $200 to a candidate would not be used until all required information on the contributor was provided. The FEC, by majority vote, would perform random audits of campaigns after they were over. The names and addresses of contributors of amounts between $50 and $200 would be reported. Contributions would not be solicited by falsely claiming to represent a candidate, a political committee, or a political party. New reporting requirements would be placed on soft-money expenditures. New requirements on the content of candidates' advertising would be enacted; the intent of those requirements would be to identify those candidates as being responsible for the content of their advertisements. If a candidate agreed to spend less than $50,000 on his or her election, he or she would be entitled to matching public funds to the extent an opponent spent more than $50,000 of personal funds. Labor unions would be required to inform those nonunion members who were required to make payments to them for collective bargaining of the procedures they could use to receive reimbursement for political activity expenditures not related to collective bargaining (no protection would be provided for union workers; for related debate, see vote No. 17). A candidate would not be allowed to use campaign funds for personal purposes. Members running for reelection would not be allowed to use the frank for mass mailings in the year before the election. It would be illegal to solicit election funds from a Federal building (it is already illegal to do so). The monetary penalties for various campaign violations would be increased. The current ban on accepting contributions from foreign nationals would be strengthened. Contributions from minors would be banned. If any part of the amendment were found unconstitutional, the rest of the amendment would remain in effect. Any court decision under this amendment would be appealable directly to the Supreme Court.

On September 8, 1998, Senator Lott sent to the desk, for himself and others, a motion to close debate on the amendment.

NOTE: A three-fifths majority (60) vote of the Senate is required to invoke cloture. Subsequent to the failure to invoke cloture,

the amendment was withdrawn.

Those favoring the motion to invoke cloture contended:

The arguments on this measure are the same, but we think that the politics have shifted. Most importantly, the House has courageously passed a campaign finance reform bill. Significantly, more than one-fourth of House Republicans voted in favor of a reform bill that is substantially similar to the McCain/Feingold proposal, which proves that the proposal is not biased in favor of Democrats. This action by the House has greatly increased the pressure on the Senate. A majority of the House supports this measure, as does a majority of the Senate, as does the President. The only hurdle that remains is the need to get 60 votes in the Senate to break a filibuster. We are only 8 votes shy. If just 8 Senators will switch their votes, we will be able to give Americans the campaign finance reform bill that they deserve. The other major factor that we think should influence Senators to switch their votes in favor of this legislation is that Americans are reporting that they are disgusted with politics and are not going to vote. We may have record-low turnouts in the upcoming elections if we do not enact reforms to let people know that Members are not owned by the special interests that spend huge sums on our campaigns. Voter turnout is getting so low that we believe our democracy is threatened. Those Senators who argue that we have not compromised or that we have not tried to address their constitutional concerns are incorrect. The current version of this legislation has been substantially altered to meet their concerns, and many constitutional experts who originally opposed the bill now say that it will easily pass judicial scrutiny. After years of effort, we are convinced that we are finally close to passing a campaign finance reform bill. If need be, we are willing to fight this issue out at length. All we need are 8 more votes. We urge our colleagues to support cloture.

Those opposing the motion to invoke cloture contended:

The Senate spent an excessive amount of time debating a McCain/Feingold campaign finance proposal this February (see vote Nos. 12 and 14-17 for the arguments that were made at that time and which were repeated during this debate). That proposal was rejected by a strong majority of Republicans as being totally unacceptable as a starting point for debate on the issue of campaign finance. Republicans rejected it because it was blatantly unconstitutional, because it was based on the false and tremendously dangerous premise that it is advisable to limit political speech, and because it was blatantly biased in favor of Democratic candidates. One major amendment was made to that bill during debate. That amendment, which attempted to resolve constitutional issues, was made in good faith, but it created as many new problems as it resolved and the bill remained as unconstitutional, unwise, and biased as it was when it was introduced. Though Democrats were willing to consider changes based on constitutional questions, they refused efforts to make the bill less biased in favor of Democratic candidates. Specifically, they unanimously rejected efforts to stop unions from taxing their members and non-members alike to get money to spend on politics (in many States, workers are forced to pay union dues even if they do not belong to unions). Though 40 percent of union members regularly vote for Republicans, unions spend money almost exclusively on Democrats, and they spend enormous sums. Democrats apparently think it is very important to restrict voluntary political spending, but it is not at all important to stop unions from taking money from workers against their will to spend on Democratic candidates whom those workers do not support. Understandably, a strong majority of Republicans refused to close debate on that bill and it died when it became clear that supporters were far from cloture strength.

The McCain/Feingold amendment that is now before the Senate contains exactly the same provisions as the bill that the Senate considered this February. The Senate is wasting its time reconsidering this proposal. Nothing that has occurred in the past seven months makes those of us who opposed it earlier this year any more likely to support it now. The main hope of proponents of the amendment is that Senators will decide to approve it because the House just passed a campaign finance bill. They believe that this action represents some sort of watershed event. They are wrong. The House passed similar measures in the 101st Congress, the 102nd Congress, and the 103rd Congress. Our colleagues are also impressed that one-fourth of Republicans joined Democrats in passing that measure. We would be impressed if a bill ever passed with equal support from both parties, rather than total support from one party and three-fourths opposition from the other. The other change that is supposed to impress us is that there have been a few recent primaries with low voter turnout, which our colleagues tell us they have concluded is due to the voters' disgust with high spending on campaigns. We note, though, that for the first time in at least 25 years a majority of Americans (56 percent) approve of the way Congress is doing its job. The Republican 104th and 105th Congresses, among other accomplishments, have balanced the budget, reformed welfare, cut the size of the Government, and cut taxes. Instead of trying to restrict campaign speech that might criticize us, we Republicans have done our job and the voters are responding. Also, in our experience, when we have been in competitive primaries spending has gone up, interest has been generated, and voting percentages have increased. We agree that it is likely that voting will go down in the upcoming election, but that decline will not be due to campaign spending. Instead, it will be due to such factors as voter disgust with the behavior of this particular President. When Americans are asked what issues concern them they do not even mention campaign financing. They do mention, though, the moral decline in this country. In fact, that is now their main area of concern. Nothing else has changed. There have been about a dozen new court cases on campaign finance laws,

and every one of the decisions in those cases has reinforced our constitutional arguments. The Clinton Administration is still supposedly investigating itself for illegal activities in the President's reelection campaign, and that investigation is still not getting anywhere. Finally, the Attorney General, in our opinion illegally, is still refusing to appoint an independent counsel to investigate that campaign. The events of the past few months have only increased our opposition to this measure. We will of course oppose cloture.